

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

FORREST STOBBE,

Plaintiff,

v.

GILL et al.,

Defendants.

Case No. 1:20-cv-00656-HBK
ORDER TO SHOW CAUSE
TEN-DAY DEADLINE

Plaintiff Forrest Stobbe, a state prisoner, initiated this action by filing a pro se civil rights complaint under 42 U.S.C. § 1983. (Doc. No. 1). Plaintiff concurrently paid the filing fee. (Receipt #CAE100045610). The Court screened Plaintiff's complaint and found that it failed to state a claim. (Doc. No. 4 at 1). Plaintiff timely filed a First Amended Complaint. (Doc. No. 5). On February 3, 2023, the Court screened the FAC and found that it stated cognizable Americans with Disabilities Act ("ADA") and Rehabilitation Act ("RA") claims against one Defendant, but no others. (Doc. 9 at 1-2).

Plaintiff was ordered to respond within 21 days to advise the Court whether he would (1) stand on his FAC as screened and proceed only on his ADA and RA claims against Defendant Gill in her official capacity, thereby voluntarily dismissing the other Defendants and other claims the Court deemed not cognizable; or (2) stand on his FAC subject to the undersigned issuing a Findings and Recommendation to dismiss the Defendants and claims the Court has deemed not

1 cognizable. (Doc. No. 9 at 11-12). Plaintiff was advised that if he “fails to timely respond to this
2 Court Order, i.e. fails to elect and notify the Court of any of the three [sic] options, the
3 undersigned will recommend that the district court dismiss this case as a sanction for Plaintiff’s
4 failure to comply with a court order and for failing to prosecute this action. *See* Local Rule 110;
5 Fed. R. Civ. P. 41(b).” (*Id.* at 12). As of the date of this Order, Plaintiff has not responded to the
6 Court’s February 2, 2023 Screening Order. It appears that Plaintiff has abandoned this action.

7 Federal Rule of Civil Procedure 41(b) permits courts to involuntarily dismiss an action
8 when a litigant fails to prosecute an action or fails to comply with a court order. *See* Fed. R. Civ.
9 P. 41(b); *see Applied Underwriters v. Lichtenegger*, 913 F.3d 884, 889 (9th Cir. 2019) (citations
10 omitted); *Hells Canyon Pres. Council v. U.S. Forest Serv.*, 403 F.3d 683, 689 (9th Cir. 2005)
11 (“[T]he consensus among our sister circuits, with which we agree, is that courts may dismiss
12 under Rule 41(b) *sua sponte*, at least under certain circumstances.”). Local Rule 110 similarly
13 permits courts to impose sanctions on a party who fails to comply with a court order.

14 Accordingly, it is hereby **ORDERED**:

15 Within **ten (10) days** of receipt of this Order, Plaintiff shall comply with the Court’s
16 previous February 3, 2023 Order, or show cause why the Court should not recommend that this
17 case be dismissed **without prejudice** for Plaintiff’s failure to prosecute this action and/or his
18 failure to timely comply with the Court’s February 3, 2023 Order.

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20 Dated: March 22, 2023


21 HELENA M. BARCH-KUCHTA
22 UNITED STATES MAGISTRATE JUDGE
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